



Office of the Attorney General

State of Texas

April 17, 1992

DAN MORALES

ATTORNEY GENERAL

Mr. Leonard W. Peck, Jr.
Assistant General Counsel
Texas Department of Criminal Justice
Institutional Division
P.O. Box 99
Huntsville, Texas 77342-0099

OR92-164

Dear Mr. Peck:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13486.

The Texas Department of Criminal Justice Institutional Division (the "department") has received a request from an inmate for a copy of his "classification record." You have submitted as responsive the requesting inmate's classification file to us for review and claim that some of it is excepted from required public disclosure by sections 3(a)(1), 3(a)(7), 3(a)(8) and 3(a)(11) of the Open Records Act.

You contend that information on pages 39 and 43 of the file is excepted from required public disclosure by section 3(a)(1) because it is deemed "sensitive" under the *Stipulated Modification* to the *Ruiz Amended Decree*. Because the *Ruiz* lawsuit is ongoing, the proper authority to determine access to "sensitive" information is the forum court. Accordingly, we decline to address the availability of the information on pages 39 and 43 at this time. See Open Records Decision No. 560 (1990).

You claim that pages 13 through 19, 29, 30, 50, and 52 are excepted from required public disclosure by section 3(a)(8), which excepts

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime

and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

When the "law enforcement" exception is claimed as a basis for excluding information from public view, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986) (citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977)); *see also* Open Records Decision No. 413 (1984) (Department of Corrections is a "law enforcement" agency within the meaning of section 3(a)(8)).

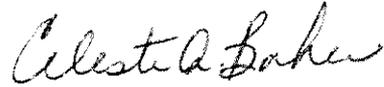
We have examined the information submitted to us for review. It includes "Not For Same Use As" (NFSUA) data, prison law enforcement investigations, and the identities of suspects in these investigations. We conclude that release of pages 13 through 19, 29, 30, 50, and 52 would undermine a legitimate law enforcement interest. Accordingly, they may be withheld from required public disclosure under section 3(a)(8) of the Open Records Act.

Finally, you claim that pages 63 and 64 of the classification file are excepted from required public disclosure by section 3(a)(11), which excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process. *See, e.g., Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision Nos. 538 (1990); 470 (1987); *see also* Open Records Decision Nos. 468 at 1, 464 (1987); 345 (1982). Purely factual information, however, does not constitute advice, opinion, or recommendation and may not be withheld under section 3(a)(11). Open Records Decision No. 450 (1986).

While pages 63 and 64 of the classification file contain some factual information not ordinarily excepted from required public disclosure under section 3(a)(11), it is inextricably intertwined with advice, opinion, and recommendation. Accordingly, we conclude that these two pages may be withheld from required public disclosure under section 3(a)(11) in their entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-164.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GK/nhb

Ref.: ID# 13486

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